



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Bullrun Mountain Honey Co., Inc.

File: B-243325

Date: April 3, 1991

Kenneth A. Martin, Esq., Elliott, Bray & Riley, for the protester.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procuring agency properly did not permit protester to correct alleged mistake in bid--waiver of small disadvantaged business evaluation preference--where mistake is not apparent from the face of the bid.

DECISION

Bullrun Mountain Honey Co., Inc. protests the decision of the Defense Logistics Agency (DLA) not to permit Bullrun to correct the bid it submitted in response to invitation for bids (IFB) No. DLA13H-91-B-9138.

We dismiss the protest.

The IFB, which was issued on January 11, 1991, for 52,000 cases of salad oil, provided that a 10 percent preference would be given to small disadvantaged business (SDB) concerns. See Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 52.219-7007. The clause also gave SDB concerns the option to waive the evaluation preference by checking a box so indicating. Two bidders, including Bullrun, responded to the solicitation. Bullrun, an SDB, checked the block in DFARS § 52.219-7007 waiving the 10 percent evaluation preference. With the preference, Bullrun would be the low bidder on five out of seven line items. Bullrun initially informed DLA that it had mistakenly waived the preference and asked to correct its bid. After DLA refused its request to correct the bid, Bullrun protested to our Office.

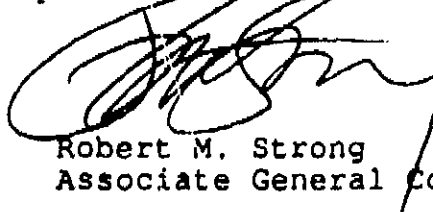
Bullrun requests that our Office direct DLA to permit the firm to correct the alleged mistake in its bid. Bullrun

asserts that it was clear from the face of the bid that the firm checked the box waiving the preference by mistake. In this regard, Bullrun points out that it certified in its bid that it is a manufacturer of the solicited items and is an SDB. Bullrun argues that these certifications are consistent with the firm's claim that it did not intend to waive the preference.

A clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer before award if the contracting officer first gets verification from the bidder of the intended bid. Federal Acquisition Regulation (FAR) § 14.406-2. Examples of apparent clerical mistakes include such things as the obvious misplacement of a decimal point. Id. A mistake other than an apparent clerical mistake may be corrected before award if the bidder presents clear and convincing evidence of the existence of the mistake and the bid actually intended. FAR § 14.406-3; W.R. Hall, Inc., B-237161, Jan. 4, 1990, 90-1 CPD ¶ 16. If the bid as corrected will displace a lower bidder, the existence of the mistake and the bid actually intended must be substantially ascertainable from the IFB and the bid itself. FAR § 14.406-3(a).

Here, DLA properly refused to permit Bullrun to correct the alleged mistake in its bid. There is nothing on the face of the bid from which it is apparent that Bullrun mistakenly checked the box waiving the preference. In this regard, Bullrun argues that waiving the privilege is inconsistent with its certification that it was a manufacturer and an SDB. However, the election to waive the evaluation preference applied only to SDBs.^{1/} An SDB concern automatically would receive the preference unless it checked the box waiving it; a firm was only required to check the box if it was waiving the preference. Thus, the fact that Bullrun also certified itself as an SDB does not demonstrate that Bullrun mistakenly waived the preference. Since there was no evidence of the existence of a mistake, DLA properly decided not to permit Bullrun to correct the alleged mistake.

The protest is dismissed.



Robert M. Strong
Associate General Counsel

^{1/} The box that Bullrun checked preceded the clause: "The SDB Offeror requests that the evaluation preference . . . not be given to this offer." (Emphasis added.)